

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In Re the Matter of:

DAVID L. TITUS,

Amateur Radio Operator and Licensee of
Amateur Radio Station KB7ILD.

EB Docket No. 07-13
FRN No. 0002074797
File No. EB-06-IH-5048

STATUS REPORT

To: Richard L. Sippel
Chief Administrative Law Judge

1. By *David L. Titus*, Order, FCC 07M-30 (ALJ, rel. August 29, 2007), the Presiding Judge ordered the parties to submit status reports (or a joint status report) by noon, September 18, 2007. This is the respondent's status report.

2. The August 29 order specifies that each party, in its report, "represent the evidence needed to meet the party's burden of proof.... "Mr. Titus has no burden of proof. He does, though, intend to offer evidence. The particulars of his evidence cannot be determined until he learns the evidence the Enforcement Bureau holds for possible use against him.

3. The August 29 order also specifies that each party state in its status report "whether obtaining specific evidence for use at hearing will require compulsory process."

STATUS REPORT
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1 Counsel for the parties discussed on Friday, September 14, 2007, Mr. Titus' need to receive
2 copies of the documents concerning him, especially police reports, that the Enforcement
3 Bureau holds. Mr. Titus does not have copies of these documents (with the likely exception
4 of a Mercer Island Police Department report) and is not entitled under Washington law to
5 receive them from police agencies. Even if the Enforcement Bureau's copies are not exempt
6 from production under the Freedom of Information Act, Mr. Titus does not wish to obtain
7 them that way, since doing so could lead to their becoming accessible to any member of the
8 public. He presumes they detail his deviant sexual behavior as a teenager, making their
9 public release likely an acutely embarrassing and even traumatic event for him. Counsel for
10 the Enforcement Bureau expressed a willingness to discuss with the Presiding Judge
11 possible non-FOIA methods for it to provide Mr. Titus copies of these documents. Mr. Titus
12 thus hopes that compulsory process will not be necessary for him to obtain evidence.
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15 4. Counsel for Mr. Titus is considering whether to engage an expert who might
16 present testimony at the hearing. Chief among the factors influencing that decision is cost. If
17 the expert were required to appear in person in Washington, D.C., for cross-examination, his
18 or her fees would likely be quite large, especially if he or she were based in the Seattle area,
19 where Mr. Titus and his counsel live and work. If the expert's cross-examination could be
20 presented at the hearing by video deposition, that would much reduce the cost. Counsel for
21 Mr. Titus would like the prehearing conference on September 19 to include discussion of the
22 possibility of a video deposition—or even of the hearing itself taking place at the FCC's
23 offices in Kirkland, Washington, since that is close to home and workplace for most—
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perhaps all—witnesses in the case.

5. The August 29 order established as an agenda item for the prehearing conference now set for September 19 “brief argument and bench rulings on opposed or refused discovery....” Concerning Interrogatory No. 2 in David Titus’ First Interrogatories to the Enforcement Bureau, his counsel will argue that it is eminently reasonable and feasible for the Enforcement Bureau to identify to him similar cases it has brought. It is customary in general civil litigation, at least in Washington state, for one party to ask the other in discovery to identify similar cases it has litigated. This information is readily available to the party that brought or defended the litigation. Even if Mr. Titus might find every case within the scope of Interrogatory No. 2 through his own searching, it is unreasonable to require him to do the searching, and to risk missing cases within the scope of the interrogatory, when the Enforcement Bureau knows all the cases within its scope.

6. The Enforcement Bureau is incorrect to characterize this interrogatory as demanding it do Mr. Titus’ legal research. Mr. Titus intends to use this information as part of his *factual* research; that is why he seeks names of the attorneys who represented the respondents.

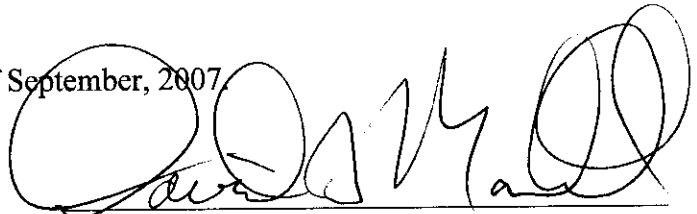
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1 7. If the Enforcement Bureau has litigated so many cases within the scope of
2 Interrogatory No. 2 that providing the requested information for all of them would be unduly
3 burdensome, then it would be appropriate for the scope to be narrowed, perhaps to recent
4 years. But blanket refusal to answer is not reasonable.
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7 DATED this 17th day of September, 2007



10 DAVID S. MARSHALL, WSBA #11716
11 Attorney for David L. Titus
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CERTIFICATE OF SERVICE

David S. Marshall certifies that on the 17th day of September, 2007, he sent via
overnight courier the original and six copies of the *Status Report* to:

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

and copies were deposited in the United States mail, with postage prepaid thereon, to:

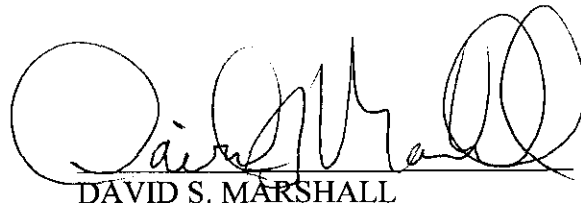
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